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CORRESPONDENCE

WITH THE

NETHERLANDS GOVERNMENT

RESPECTING THE

REQUISITIONING OF DUTCH SHIPS BY THE ASSOCIATED GOVERNMENTS.

Presented to both Houses of Parliament by Command of His Majesty.
May 1918.

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Correspondence with the Netherlands Government respecting the Requisitioning of Dutch Ships by the Associated Governments.

No. 1.

Mr. Balfour to Sir W. Townley.

(Telegraphic.) *Foreign Office, March* 21, 1918.

I REQUEST you to make the following communication to the Minister for Foreign Affairs :—

"1. After full consideration, the Associated Governments have decided to requisition the services of Dutch ships in their ports in exercise of the right of angary. They would have preferred to obtain the use of the ships by way of agreement with the Netherlands Government, and, as your Excellency knows, an arrangement for this purpose was made between representatives of the Netherlands Government and of the Associated Governments as long ago as the beginning of last January.

"2. Unfortunately the Netherlands Government for more than two months did not see their way to ratify that arrangement. They, moreover, had found it impossible to carry out in all its terms the *modus vivendi* which had been arrived at pending the ratification of the agreement, explaining that the German Government would not allow them to do so. It seemed, therefore, clear to the Associated Governments that the proposals originally made were not adequate to the present situation. Delay had altered the circumstances. The condition that Dutch shipping was not to be used in the danger zone was no longer acceptable in itself, and might at any time have been made still less so by an extension of the zone by our enemies. Further, the fate of the *modus vivendi* had shown that in the very difficult position in which the Netherlands Government was placed, the execution of the agreement would probably have been attended with difficulties and delays still more prejudicial to the interest of the Associated Governments.

"3. The Associated Governments therefore proposed that the limitation on the use of Dutch shipping contemplated under the original scheme should be abandoned, and that, in its altered form, the agreement should come into force immediately. To this the Netherlands Government could not assent, except upon terms which would have made it practically impossible for the Associated Governments to make any use of the Dutch shipping. To say that shipping shall not be employed for the carriage of war material is at this stage of the war equivalent to saying that it shall not be used at all. For with respect to the great majority of cargoes it is impossible to say that they are not required, directly or indirectly, for the purposes of war.

"4. For these reasons the Associated Governments have felt compelled to fall back on their unquestionable right to employ any shipping found in their ports for the necessities of war. But they are very anxious that the exercise of this right should be as little burdensome to the shipowners and as little obnoxious to the Netherlands Government as it can be made.

"5. The Associated Governments hope that it may be possible to arrive at an agreement with the owners as to rates of payment, values for insurance, &c., and on these points a further communication to the Netherlands Government will be sent very shortly. At the end of the war the ships will be returned to their owners, who will, of course, be compensated for any losses caused among the ships by enemy action. The Associated Governments are willing, further, to offer the owners, on conditions to be mutually agreed upon, an option to have any ship which may be so lost in the danger zone as it exists at present actually replaced by another ship within the shortest possible period after the conclusion of peace. I need hardly assure your Excellency that all facilities in the power of the Associated Governments will be given for the repatriation of the crews if desired, and that all precautions will be taken to ensure that they be treated with every courtesy and consideration.

"6. Further, the Associated Governments hereby give to the Netherlands Government an undertaking that Dutch ships which may leave a Dutch port *after* the

date of this communication shall not be brought into Allied services otherwise than in agreement with the owners.

"7. The Associated Governments having been informed that, unless the stock of food grain now in the Netherlands be replenished in time, Holland is threatened with a serious shortage during the third quarter of this year, will at once place at her disposal 50,000 tons of wheat (or an equivalent quantity of flour) or other breadstuffs in a North American port and 50,000 tons in a South American port. It is hoped that the Netherlands Government will immediately send out such part of the tonnage remaining in Holland as may be necessary to lift this grain. The Associated Governments guarantee that as far as it is in their power these ships shall enjoy immunity from delay and detention, and receive every facility for bunkering.

"8. The United States Government have already intimated that the steamship 'New Amsterdam' at present in New York will not be utilised by them, and will under the special arrangement covering it be allowed not only to return at once to Holland but to load a cargo of foodstuffs consisting of rice and coffee. This cargo will be composed of the original cargoes of the steamship 'Samarinda' and the steamship 'Adonis,' which would have been allowed to proceed to Holland if the *modus vivendi* already referred to had come into operation.

"9. As regards further supplies of cereals, foodstuffs, raw materials, and all other articles, the importation of which is provided for in the proposals for the general arrangement, the Associated Governments are willing to give Dutch vessels now in Dutch ports every facility for their importation into Holland in accordance with the list and the terms of the general agreement, if the Netherlands Government are ready (as the Associated Governments hope they are) to signify their acceptance of its terms generally.

"10. The Associated Governments believe that the Dutch ships now in their ports do not fully correspond with the tonnage to whose services they had hoped to become entitled under the terms of the proposed general arrangement, and that the vessels now in, or on their way to, Dutch ports will be found to exceed the tonnage needed for the imports of the Netherlands and their colonies calculated on the basis of the original tonnage proposals provisionally agreed by the Dutch delegates. If, contrary to this expectation, it should be proved to the satisfaction of the Associated Governments that this is not the case, the latter will be ready to make up any deficiency in the tonnage left at Holland's disposal on the lines of the various provisions of the general arrangement covering the use and distribution of Dutch tonnage as soon as the Netherlands Government shall have supplied the Allied Governments with definite figures of the tonnage now in, or on the way to, Dutch ports."

No. 2.

Sir W. Townley to Mr. Balfour.

(Telegraphic.) *The Hague, March* 31, 1918.

THE following is a translation of a note dated 30th March and received from the Minister for Foreign Affairs to-day :—

"In your note of 22nd March your Excellency was good enough to inform me that the Associated Governments, in virtue of the so-called 'right of angary,' have decided to requisition the services of Dutch vessels lying in their ports. Your Excellency added that this measure is due to delay on the part of the Queen's Government in 'ratification' of the arrangement elaborated in respect of tonnage and to the impossibility of putting into execution the *modus vivendi* or provisional arrangement concluded pending ratification of the definite arrangement above mentioned in consequence of the attitude of Germany towards this arrangement. According to your Excellency's Government, delay would have modified the circumstances, the condition that Dutch tonnage would not be employed in danger zone was no longer acceptable, and the putting into execution of the definite arrangement would only have succeeded after difficulties and delays still more harmful to the interests of the Associated Governments.

"In the first place, I must remark that the Queen's Government, as your Excellency knows, in no way agree to the interpretation now given to the right of angary, an ancient rule unearthed for the occasion and adapted to entirely new conditions in order to excuse seizure *en masse* by a belligerent of the merchant fleet of a neutral country.

This measure, which only rests on force, is unjustifiable, whether one is pleased to give it the name of 'requisitioning of services' or any other label destined to conceal its arbitrary character, and if its application be limited or not to the duration of the war or mitigated in its details so as to make it more supportable. The so-called right of angary is the right of a belligerent to appropriate as an exception a neutral ship for a strategical end of immediate necessity, as, for example, to close the entrance of a seaport so as to hinder the attack of an enemy fleet. Application of this right to a fleet *en masse* is an interpretation entirely arbitrary and incidental ("d'occasion").

"It is further my duty to observe to your Excellency that the recital of facts contained in your note is far from being exact.

"The 'Basis of Agreement' drawn up in London was not an arrangement properly speaking which only had to be ratified. During the negotiations in London it had been expressly agreed that it was only a question of the basis on which the Netherlands Government would make proposals. I specially raised this question in the note which I addressed to the States-General on 11th March last and the exactitude of which the President of the United States has in every respect confirmed in the declaration made in connection with the proclamation of 20th March.

"Definite proposals could only have been made by the Netherlands Government on the 17th March. The first resistance of the German Government had certainly contributed to delay, but the British Government suppress certain points of the highest importance in their narration of the facts. I will permit myself therefore to bring the following to your recollection :—

"The object of the *modus vivendi* was to give Dutch ships in America an opportunity to sail, and this for the Associated Governments' interests, pending conclusion of a definite arrangement. It is true that hire of vessels was slower than had been hoped, a fact in a great measure attributable to the circumstance that for a reason still unknown telegrams exchanged between shipowners and their agents in the United States either did not pass or only passed with great delay; it is true also that some ships reserved on the express demand of the Netherlands Government for the Belgian Relief Commission were unable to be used for this end, because Germany did not consent to the departure of Dutch ships to be sent from Holland in exchange for those leaving the United States; this could not, however, have caused real delay seeing that the United States Government was immediately notified by the Netherlands Government of this *contretemps* in order to be able to give the ships reserved for the Belgian Relief Commission another destination. Likewise there was no delay in duly freeing the few ships reserved for provisioning of Switzerland and to be sent to the port of Cette as soon as the French had guaranteed their immunity. Except in the case of the ships of the C.R.B. Germany did not interfere in anything as regards the execution of the *modus vivendi*, which, moreover, only had bearing, for the rest, on navigation between overseas countries.

"Almost all the ships in question were duly freed, and many of them had already sailed, when, on the 22nd February last, the Netherlands Government, taking note of the want of wheat threatening the country towards the beginning of next summer, asked the Associated Governments, and in particular America, to make them an advance of 100,000 tons of wheat on the total included in the basis of the agreement of London. On the 6th March the Associated Governments acceded to this request, but on onerous conditions, obtaining in exchange for this generosity immediate disposal of Dutch tonnage, which, according to the above-mentioned basis of the agreement of London, could eventually be employed in the service of Allied interests. The Netherlands Government were not prevented by their neutrality from accepting this agreement, since neutrality could only be called into question if Dutch ships were employed for the service of military revictualling between America and the Allied countries of Europe. But from the day after, namely the 7th March, the proposal of the Associated Governments suddenly took on quite a new aspect; they insisted more especially, and that in flagrant contradiction to what had been expressly laid down since the discussions in London, that Dutch ships should be used also in the danger zone; in other words, for transport of every description between America and England, France, or Italy. This new condition was inacceptable from the point of view of neutrality unless it were guaranteed that the ships would not be employed for transport either of troops or of war supplies and that they were not armed. The British and United States Governments and their Allies, not finding themselves able to acquiesce in these restrictions on the free use they wished to be able to make of ships which did not belong to them, nothing appeared more simple to them than to proceed to the seizure of all Dutch ships on which they could lay their hands, declaring that it was a

question of exercising an indisputable right. Your Excellency has watched the resentment and indignation which this measure of violence applied to the merchant fleet has produced in the whole country and amongst all classes of the population. The Queen's Government have not concealed to what extent they share these feelings. No expression of good-will in application of this measure, such as the intention to replace the ships destroyed, repatriate crews, &c., could repair the fact that it has been taken in defiance of the right and of the respect due to the sovereignty of States. It only remains for me to beg your Excellency to be good enough to transmit to His Majesty's Government, and through their intermediary to the Governments of which they are the mouthpiece, the most energetic protest of the Queen's Government against the seizure of which the Dutch merchant fleet is the victim.

" The Netherlands Government reserve all their rights to complete repair for injury resulting from this act.

" Your Excellency informs me that the Associated Governments engage not to take into their service without the consent of the owners Dutch ships leaving a Dutch port from 20th March.

" To provide for the wants of a country threatened with famine, the Associated Governments declare themselves ready to place 100,000 tons of wheat or of flour at the disposal of the Netherlands. They hope that the Government will not be slow in sending to fetch this grain in Dutch ships, for which they then guarantee as far as they can all necessary facilities. Your Excellency will please note that in the actual circumstances it is impossible for the Netherlands Government to consent to a further despatch of ships, given the innumerable difficulties they have experienced in the past, and the different pretexts under which their ships, after having put into overseas ports in good faith, have been detained there indefinitely, often for reasons not connected with the ship or its cargo, the whole culminating in this last measure of seizure, which has so deeply wounded the national dignity.

" I recall in this connection the case of ships now in the United States, and which once there were unable to obtain 'letters of assurance'—a new regulation which did not exist at the moment they entered into port; or, again, the case of ships which were detained in Halifax solely in order to force the Netherlands Government to stop the transit of metals on their territory, the legality of which transit the British Government contested; again, the case of ships held at present at Gibraltar, at Freetown, and at Halifax, and which had complied with all formalities required; again, those of our ships at Singapore, which felt themselves to be quite unassailable, thanks to the cordial relations existing for so long between the Dutch East Indies and the Straits Settlements, thanks also to the stipulations of the 'Rice Agreement' of recent date; finally, the case of Dutch ships now detained in United Kingdom ports, to which they sailed in execution of the clauses of the Agricultural Agreement or for service of the Belgian Relief Commission.

" What guarantee would the Netherlands Government have that the ships, which they would now send to overseas ports, would not be for some reason or other first detained, and then, owing to the necessities of war, seized like the others?

" Negotiations for an economic arrangement having been abruptly terminated by the action of the Associated Governments, it is for them to declare what are their intentions now that they have made impossible a partition of tonnage such as had been provided for in the agreement which the Netherlands Government had declared themselves ready to conclude on the 17th March last. As to the 'rationing,' for example, it goes without saying that it is for the country which produces the commodities and other goods destined for the Netherlands, to decide whether they will deliver them or not, apart from the question of possibility of transport.

" In conclusion, as regards the enquiry of the Associated Governments as to the amount of tonnage now in or on the way to Dutch ports, the Queen's Government consider in the new circumstances any exchange of views in this respect would be useless."

No. 3.

Mr. Balfour to M. van Swinderen.

Sir, *Foreign Office, April* 25, 1918.

AS you are doubtless aware, His Majesty's Government have been in correspondence with the Netherlands Government on the subject of the requisitioning of Dutch vessels by the Associated Governments.

The Netherlands Minister for Foreign Affairs addressed a note to His Majesty's Minister at The Hague, setting forth the views of the Netherlands Government on the 30th ultimo. That note has received the most serious consideration of His Majesty's Government, and I have now the honour to communicate to you in the form of a memorandum their answer to it.

I should be grateful if you would be so good as to forward this memorandum to the Netherlands Government at your earliest convenience.

I have, &c.
A. J. BALFOUR.

Enclosure in No. 3.

THE note, dated the 30th March, which the British Minister received from the Netherlands Minister for Foreign Affairs has received most careful study and consideration at the hands of His Majesty's Government.

It is clear that both on the facts and on the law there is a wide divergence of view between His Majesty's Government and the Netherlands Government. The former cannot but express their regret that allegations should have been made and published in the Netherlands which are calculated to give rise to much misconception as to what has really taken place since the negotiations with the Dutch delegates were commenced in London in November 1917, and as to the attitude adopted by the Associated Governments. To clear away these misconceptions His Majesty's Government prefer to deal first with the facts and then with the legal principles applicable to the situation that arose. They do so, not because they attach more importance to the one than to the other, but because it is impossible without a clear understanding of the facts to determine the legal rules which apply.

In the month of November 1917 delegates were nominated by the Netherlands Government to proceed to London for the purpose of coming to an agreement on the questions which were then outstanding between the Netherlands Government on the one side and the Associated Governments on the other. On the 24th December an agreement was reached, and a document recording it was handed to Jonkheer M. A. Snouck Hurgronje, one of the Dutch delegates. His Majesty's Government recognise that the Dutch delegates were not plenipotentiaries, and were not authorised to sign any document which would bind their Government, but on behalf of the Associated Governments they desire to repudiate the suggestion that these negotiations were merely preliminaries on which the Netherlands Government should subsequently make proposals.

In support of this view it is well to quote the following extract from the covering letter in which the text of this document was handed to M. Snouck :—

> "With regard to the proposed agreement itself I should like to take this opportunity to express my great appreciation of the able and friendly manner in which you have conducted the negotiations on behalf of your Government. Both parties no doubt had to give away something which we had hoped to retain, but I feel the proposals, as they now stand, are such that if accepted by both Her Majesty's Government and the Allies they will be found practicable, and to be to our mutual benefit."

The document is headed "Proposed basis of agreement between the Netherlands Government and the Allies and the United States of America. (To be submitted to the Netherlands Government and the Allies and the United States.)" It covered a considerable variety of subjects, and on all of them the main principles to be followed in the agreement were settled, though on some there were details which required further adjustment. The agreed outline of the proposed tonnage arrangements was handed to M. Valstar, the delegate who had been primarily concerned in shipping matters, on the 4th January.

It was of course open to the Netherlands Government as much as to anyone of the Associated Governments to reject the whole scheme, and upon such rejection it would be open to any such Government to intimate a desire to initiate fresh negotiations upon some other basis ; but in the absence of such rejection, all that was required was the acceptance of the agreement (whether or not this acceptance is called "ratification" is immaterial) and the adjustment of the outstanding details.

On the conclusion of the negotiations, the Dutch delegates separated ; some of them returned to Holland for the purpose, at least so the British delegates understood, of

explaining the proposal to their Government and securing their acceptance; one delegate, who had joined later, remained in London to await the result. This would certainly suggest that the Dutch delegates took the same view of the character of the arrangement arrived at as is taken above. During the prolonged period that followed, His Majesty's Government awaited the outcome of the examination of the scheme by the Netherlands Government. At the end of January they were led to understand the Dutch reply might be expected in a few days and it would be favourable. No such reply, however, came.

Passing now to the *modus vivendi*, His Majesty's Government feel that they cannot accept the note of the Netherlands Minister for Foreign Affairs as a fair description of what has happened. The so-called *modus vivendi* was an arrangement proposed by one of the Dutch delegates, M. Snouck, first in December and later at the beginning of January, in the course of the negotiations. Various proposals had been made as to the immediate use of the Dutch ships lying in American ports, and ultimately an arrangement was arrived at on the 20th January, 1918, of which the following was the first and most important clause:—

> "1. All vessels in United States ports, except those mentioned in clauses 2 and 3 below, to be sent out for one round trip as designated by United States authorities outside present submarine zone, and not all to go on long trips. Of these vessels an amount to be determined by the United States Government up to a limit of 150,000 tons to be employed in the service of the Commission for Relief in Belgium. On the departure of a vessel for Holland in Belgian Relief service, a corresponding vessel will leave Holland for the United States."

The extent to which this *modus vivendi* was carried out was so slight as to render it to all intents and purposes abortive. It is useless to conceal the fact that it was German opposition which caused the *modus vivendi* to break down. The arrangements with regard to the shipping for Belgian Relief work were an essential part of the scheme, and this was frustrated by the refusal of the Germans to allow any Dutch ships to leave Holland as arranged. With regard to the overseas voyages, numerous difficulties arose with the Dutch owners of the vessels lying in American ports, though the possibility of any such difficulties was not foreseen when M. Snouck proposed the arrangement. Out of the sixty-five vessels lying in American ports only nine commenced a voyage under it before the end of February, and the statement that "almost all the ships in question were duly freed and many of them had already sailed when, on the 22nd February last, the Netherlands Government asked for an advance of 100,000 tons of wheat on the total included in the basis of agreement of London" is irreconcilable with the facts.

His Majesty's Government were fully aware at this time of the campaign which had been undertaken by the German Government against the basis of agreement which had been negotiated in London; no secret was made of the fact that it was the tonnage part of it to which the Germans took particular exception. It was in fact becoming increasingly obvious that the tonnage provisions of the general agreement would fail of acceptance by the Netherlands Government.

Discussions during this period were not infrequent between the members of His Majesty's Government and the Netherlands delegate, who still remained in London, and as early as the 1st March he was informed that it looked as if it would relieve the situation for both sides if the tonnage were requisitioned. The Associated Governments were still without any expression whatever of the views of the Netherlands Government on the general agreement. Time was going on and, as has already been explained, the lapse of more than two months since the basis of agreement was first arrived at had made an essential difference in the tonnage situation. Nevertheless, the Associated Governments would, for their part, have greatly preferred to come to an arrangement by mutual agreement, and it was for that reason that another determined effort was made to reach a satisfactory conclusion with the Netherlands Government upon the lines that in return for the 100,000 tons of breadstuffs which the Netherlands Government desired, the tonnage which the Associated Governments would have received under the agreement should have been made available at once for use either within or without the war zone. This was the proposal which, in form, was accepted by the Netherlands Government on the 17th March, but coupled with conditions as to the purposes for which the ships should be used which made that acceptance nugatory. These conditions were that the ships were not to be employed for transport of troops or war supplies, and that they were not to be armed.

The note of the Netherlands Government implies that this new condition was necessary from the point of view of neutrality, but it is a view of the obligations of neutrality which is not based on international law. It is merely a rule which the Netherlands Government have made for themselves. Indeed, M. Loudon pointed this out himself to the Second Chamber of the States-General in his speech of the 19th March :—

> "Although international law does not contain any distinct rule prohibiting the transport in neutral ships of troops and war materials between two countries fighting together against a third country, the Netherlands Government have nevertheless from the beginning of the war adopted the principle that such so-called 'Etappentransport' cannot be tolerated under neutral flag, because by its character of effective aid to one of the belligerents it clashes conspicuously with the principle itself of neutrality.
>
> "The navigation of our ships through the closed area ('Sperrgebiet') has in itself nothing to do with neutrality."

It is plain that to lay down the principle that the Netherlands Government would not assent to any tonnage agreement which gave "effective aid to one of the belligerents" is equivalent to saying that they will not assent to any agreement which would be of advantage to the Associated Governments. The statement in fact confirms the view held by His Majesty's Government, that the conditions annexed to the supposed acceptance of the agreement turned that acceptance into rejection.

The rejection of this offer made the requisitioning of the tonnage still lying in the ports of the Associated Governments inevitable. If this tonnage was to lie idle, unless some agreement were come to, and if the parties were prevented from arriving at an agreement, a state of things would continue indefinitely which it was the very object of the Central Powers to achieve—the immobilisation of the Dutch tonnage.

It would seem as if the terms of the note of the 30th March were intended to produce the impression that when the Associated Governments proceeded to requisition the tonnage which was lying in their ports, they took a step which was totally unexpected by the Netherlands Government. If so, His Majesty's Government think it right to draw attention to the very clear intimation which was made by the British Minister to the Netherlands Minister for Foreign Affairs on the 8th March that if there was no agreement other measures must be taken. An equally explicit intimation was conveyed to the Netherlands Minister at Washington on the 12th March.

The assurances which were conveyed in the British note of the 21st March, if they had been rightly appreciated by the Netherlands Government, would have been seen to be at least as advantageous to Dutch interests as the tonnage provisions of the basis of agreement negotiated in London at the close of 1917. The only material alteration was the exclusion of the limitation against the use of the vessels in the war zone. Any possibility of injury to Netherlands interests, which might have been caused by this modification of the original agreement, is removed by the undertaking of the Associated Governments to replace ships wherever and however lost.

It is scarcely necessary to repeat the very definite statement contained in the British note of the 21st March as to the conditions with which the Associated Governments will comply in making use of the requisitioned ships. Liberal payment will be made for the use of the ships, which will be insured at generous values. At the end of the war the ships will be returned to their owners or, in case they have been lost from whatever cause, they will be replaced if the owners so prefer, compensation being paid in any case where they are not replaced or returned. In the interval between loss and replacement, the Associated Governments offer interest at the rate of 6 per cent. per annum on the value of the lost ship. As regards vessels leaving Dutch ports after the date of the communication, His Majesty's Government take this opportunity of repeating the assurances given in that note, and as it appears that those assurances have not been fully understood, they now emphasise that their meaning was, as has already been explained to the Netherlands Government, that no Dutch vessel leaving a Dutch home or colonial port after the 21st March would be requisitioned. That was the meaning of the statement that such vessels would not be brought into Allied services otherwise than in agreement with the owners.

M. Loudon will be aware of the fact that the Allied Governments have placed at the disposal of Holland 100,000 tons of grain in North and South American ports.

The communication of the 21st March contained a guarantee that such vessels which the Netherlands Government should send out from Holland to lift this grain would, so far as lay in the power of the Associated Governments, enjoy immunity from delay and

detention and receive every facility for bunkering. As it appeared from the note under reply that the despatch of vessels from Holland for this purpose might not at once take place, the Associated Governments, going beyond their original undertaking, have since intimated their readiness to facilitate the carriage to Holland of grain by the steamship "Hollandia" now in Buenos Aires on conditions already communicated to the Netherlands Government. In addition, it is understood the United States Government are making similar arrangements for the carriage to Holland by the steamships "Java" at Savannah and "Juno" at Curaçao, of breadstuffs within the 100,000 tons offered by the Associated Governments.

The Dutch note further alleges that the negotiations for an economic arrangement which provides for the import into Holland of large quantities of food and other necessaries had been abruptly terminated by the action of the Associated Governments. On this point His Majesty's Government can only say that they are perfectly willing to continue negotiations for an economic agreement; and if the Netherlands Government desire to make further imports of necessaries, over and above the 100,000 tons of breadstuffs already offered, it is open to them to proceed to the confirmation of that agreement. From the 24th December the Associated Governments waited for the reply of the Netherlands Government as to the basis of agreement until the 17th March, three days before the date of the previous British note. There is no obstacle to the continuation of the negotiations at any date, and if those negotiations proceed no further, and no final arrangement is arrived at, the responsibility will not rest with the Associated Governments.

It is now necessary to deal with the legal contentions in M. Loudon's note, in view of the violent statements which have been made in the Netherlands, and some of the arguments which have been used in the note under discussion. It is true that the British note of the 21st March bases the requisitioning of these ships on the right of angary, but it appears to make little difference whether the act of requisitioning is treated as founded on that right or upon the general right of sovereignty over all persons and property within the jurisdiction.

It would appear that the Netherlands Government consider the right of angary to be an ancient rule, which had fallen into desuetude until it was unearthed by His Majesty's Government as justifying an arbitrary act on their part. The right is certainly an ancient one, and its existence has been recognised, though admittedly in some cases with reluctance, by nearly all writers on international law, from Grotius downwards. It is sufficient to refer to Bluntschli, Massé, Vinnius (*ad* Peckium), Bonfils, Calvo, Halleck, Rivier, Heffter (especially note by Geffcken in the fourth French edition), Hall, Phillimore, Westlake, and Oppenheim. But if it is suggested that the right had fallen into disuse and is obsolete, it is fair (without quoting extensively from the many modern writers on international law who recognise the right as still existing) to point out that it was asserted by the German Government and acquiesced in by His Majesty's Government in 1871; that it is especially mentioned in the United States Naval War Code of 1900; and that during the discussions at the Naval War College in 1903, which resulted in the withdrawal of the Code, it was not suggested that the article in question required any modification. Further, the right was fully recognised during the present war, before any cases had arisen of the requisitioning of neutral ships which were not the subject of Prize Court proceedings, by the Judicial Committee of the Privy Council in the well-known case of the "Zamora."

It is also relevant to point out that the existence of the right is recognised in a series of treaties entered into by the German Empire during the second half of the 19th century. The treaties in question are those with Colombia (1892), Portugal (1872), Mexico (1882), Honduras (1887), Guatemala (1887), Nicaragua (1896), Costa Rica (1875), San Domingo (1885), Spain (1883), and Hawaii (1879). These treaties as a rule provide, not that the right of requisitioning ships is not to be exercised in the case of ships belonging to nationals of the contracting parties, but that if it is exercised compensation is to to be paid. Commenting on these treaties, the German jurist, Dr. Erich Albrecht, in his work "Requisitionen von neutralem Privateigentum, insbesondere von Schiffen," published at Breslau in 1912, a work in which the existence of the right in question is fully recognised, writes as follows (p. 44):—

> "All the treaties which have been quoted appear to apply not only to the case of a Government using for their own purposes neutral vessels within their own territorial waters and in their own ports, but also to the case of this being done in occupied enemy territory. None of the treaties contain any express limitation to the former case, nor can any such limitation be regarded as implied.

"What, then, can we deduce from all these treaties concerning the German view of international law on this point? The only points which emerge are the following. It can certainly not be presumed that the intention was by some of these treaties to place German ships in a worse position with regard to the other contracting States than they would otherwise occupy by international law. We find among these contracting States a number of Central American republics, which, in fact, have a fairly general reputation for unrest and unreliability. It is highly improbable that Germany would have conceded to them more extensive rights in regard to German vessels than would belong to any sovereign State by international law; for, if so, the treaties would represent a one-sided concession on the part of Germany, seeing that it is extremely rare for Dominican and Nicaraguan ships to enter German waters, while German ships frequently call at Central American ports. One may therefore safely assume that it was the intention in these treaties to place these ships in a more favourable position than they would occupy under the provisions of international law, which the German Government hold to be operative.

"From this it results that international law, as interpreted by the German Government, does not certainly create a better position for ships than the arrangements contained in the treaties, which, as regards neutral navigation, are exceedingly unavfourable. Hence international law would at the best confer a position not more favourable than that provided for in the treaty with Colombia, which is as follows: 'In the exigencies of war, neutral vessels also can be detained in order to be used for the purpose of conducting the war. For the service thus rendered compensation must be paid, but the payment need not be made in advance, nor is it necessary to fix the amount beforehand.'"

To this it may be added that treaties containing similar provisions were made between France and Spain in 1882, France and San Domingo in 1882, France and Mexico in 1886, Italy and Mexico in 1870, Italy and Guatemala and Honduras in 1868, Italy and Colombia in 1892.

It may also be pointed out that Professor Perels, formerly legal adviser to the German Admiralty, in his book "Das internationale öffentliche Seerecht," published at Berlin in 1903, fully admits the existence of the right.

In view of the above considerations, the Netherlands Government can hardly maintain that the right which the Associated Governments have exercised is an obsolete one.

The Netherlands Government state that the right is confined to the right of a belligerent to appropriate as an exception a neutral ship for some strategical end of immediate necessity, as, for example, to close the entrance of a seaport so as to hinder the attack of an enemy fleet. Such a limitation would appear to be based on a well-known instance that took place in occupied hostile territory during the war of 1870-71, but it is not borne out either by the definitions given by writers on international law or by the practice of nations. It is certainly not suggested in the modern treaties referred to above. The most frequent example in old times of the exercise of the right was, perhaps, the utilisation of neutral ships to carry a military expedition. A well-known example is the French expedition to Egypt in 1798, when a considerable proportion of the 300 transports which carried the troops were neutral ships which had been taken under the order of the Directorate, providing for the requisitioning of ships in the ports of Civita Vecchia, Nice, Genoa, Antibes, Toulon, Marseilles, Bastia, Ajaccio, and other Corsican ports. Another instance of the recognition of an analogous right is to be found in article 19 of the Vth Hague Convention, dealing with the requisitioning of neutral railway material. In fact, the only instance of the exercise of the right in the limited sense, which alone is admitted by the Netherlands Government, is that referred to above of the sinking of the British coal vessels in the Seine by the German Government in 1871. It may be well, also, to quote as a modern definition of the right that given by Rivier at p. 327 of his work, "Principes du Droit des Gens," published in 1896:—

"On appelle ainsi le droit qu'a le belligérant de s'emparer de choses de tout genre appartenant à des particuliers, notamment de navires, voitures, chariots, pour s'en servir, par exemple, pour transporter des troupes, des armes, des munitions ou pour tout autre usage. Le belligérant qui use de ce droit est tenu d'indemniser le propriétaire; l'indemnité doit, le plus possible, être debattue et fixée par avance.

"Le droit d'angarie s'exerce aux dépens des neutres comme aux dépens des particuliers ennemis. C'est même à l'égard des neutres qu'il revêt, surtout dans la guerre maritime, une importance particulière."

His Majesty's Government readily admit that in one respect the right may be taken to have been modified in modern times. According to the old practice it was permissible not only to requisition neutral shipping, but to compel the masters and crews, even against their will, to work the ships during their employment in actual military operations. Such compulsion would not be in accordance with modern ideas, and it is, I hope, unnecessary to state that the action of His Majesty's Government does not include any such compulsion on the crews of the Dutch vessels which have been taken over.

The Netherlands Government allege that the measure taken only rests on force. His Majesty's Government would suggest on the other hand that it is, on the present occasion at any rate to the extent to which it has been employed, an exercise of the right of sovereignty. Most of the writers on international law are content to treat the right as existing in usage without attempting to trace it to its original source; but it appears to His Majesty's Government that the real position is well put by Azuni, who says:—

"Les angaries sont au nombre des prérogatives de la Puissance suprême . . ., ce droit d'angarie est un *droit régalien* dont jouissent les Puissances souveraines dans les cas de nécessité ou d'utilité publique. . . ."

A similar objection is made by Calvo.

It is a commonplace that the rights of a sovereign State extend over all property within its jurisdiction, irrespective of ownership, and neutral property within belligerent jurisdiction is, in the absence of special treaty stipulations, as liable to requisition in case of emergency as the property of subjects. If demonstration of this fact were required, it would be afforded by the circumstance that it is not an uncommon provision in commercial treaties that the property of the subjects of the contracting parties shall be exempt from military requisition in the territory of the other. Vessels calling at a foreign port are, in the absence of special treaty provisions, fully subject to the local jurisdiction. A striking example of this is the practice under which such a vessel can be arrested by reason of legal proceedings in the Courts of the country which she is visiting, and detained there by order of those Courts until the proceedings are finished, or she obtains her release on bail. This being so, it is not surprising that a practice should have grown up of exercising this right in the particular case where the State in question has urgent need of neutral property such as shipping within its jurisdiction, and the fact that the exercise of this right has received a particular name should not obscure the truth that it is a legal exercise of the right of a sovereign State, and not an act by a belligerent based on no principle of law, and for which the only justification is to be found in usage.

His Majesty's Government trust that the foregoing explanation will remove from the mind of the Netherlands Government and the Dutch people any misconceptions that may have arisen as to the proceedings of the Associated Governments in requisitioning Dutch vessels, and that it will be realised that the Associated Governments have done everything in their power to render the action which they have been compelled to take, and which is, in their opinion, fully justified under international law, as little injurious as possible to Netherlands interests.

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